IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 920 OF 2000
AND
CRIMINAL APPEAL NO.738 OF 2000

CRIMINAL APPEAL NO. 920 OF 2000

Bhim @ Raju @ Shankar Gundayya Maku ..Appellant.
(Accused No.1)

V/s

The State of Maharashtra ..Respondent.

CRIMINAL APPEAL NO. 738 OF 2000

Shreenu @ Shriniwas Rajanna Pendari
Yeravada Central Prison,
Circle-I
Pune- 411 006 .. Appellant
(Orig. accused No.2)

V/s.

The State of Maharashtra .. Respondent.

Shri N.S. Singh for the appellants.

Mrs. U.V. Kejriwal, A.P.P.for the Respondent.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 11TH OCTOBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. **INTRODUCTION:-** These are two appeals filed by the appellant-accused No. 1 and appellant-accused No.2 against the common judgment and order passed by the Additional Sessions Judge, Greater Bombay, whereby both these accused-appellants have been convicted for the

offence punishable under Section 302 r/w section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for the life. Both these accused have been also convicted for the offence punishable under section 394 of Indian Penal Code and are sentenced to suffer rigorous imprisonment for 5 years. They have been also convicted under section 450 r/w section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years. All the substantive sentences has been directed to run concurrently. The accused No.2, Shriniwas has been convicted for the offence punishable under Section 411 of Indian Penal Code and sentenced to suffer rigorous imprisonment for six months. All these accused have been directed to pay fine and in default to suffer R.I. for six months. All other consequential orders have been passed. Therefore, these appeals only by accused No.1 and 2. The accused Nos. 1,2,3, and 4 are acquitted for the offences punishable under Sections 120-B, 395 of I.P.C. The accused Nos 3 and 4 are acquitted for the offences punishable under Sections 450, 302, 394 and 411 of the Indian Penal Code. The accused No.3 has been acquitted for the offence punishable under section 120B, 450,302,411,394, 395 of the I.P.C. The accused No.1 Bhim is acquitted for an

offence punishable under Section 411, 414 of I.P.C. Therefore, these two separate appeals by appellant-accused No.1 bearing No. 920 of 2000 and apellant-accused No.2 bearing NO. 738/2000. As the impugned judgment and evidence in both these appeals are common and arising out of the same incident we are disposing of these appeals by common judgment.

2. **FACTS:-** The complainant, Dr. Mayank Pandya, P.W. 1 and his wife Parminder Kaur,P.W.2 have a daughter aged about 11 years and a son aged about 9 years. The deceased mother of the complainant Damyanti was residing in their house at Flat No.1, Aruovilla building on St. Andrew's road at Santascruz (West), Mumbai. As per their normal routine, respective members of the family, except Damyanti, used to leave the house between 7 a.m. tp 9.30 a.m. and return home between 7.30 to 8.30 p.m. The family has engaged a lady cook, who used to visit the house twice, at 11.00 a.m. and at about 4 p.m. Two months before the date of incident, the family had engaged the accused No.3 Mohan for domestic work. He used to visit the house at 7.00 a.m. and after finishing work in half an hour he used to go for other work and return at about 9.00 a.m. again and

was working till 3 p.m. and thereafter again he used to work from 5 p.m. to 7.30 p.m. He was not staying in the house during the night time. The complainant and his family could not ascertain the exact address of the accused No.3 Mohan.

3. In the month of November, 1995, accused No.3 Mohan requested Parminder Kaur, (P.W. 2) wife of the complainant, P.W. 1, for 10 day's leave from 1/12/1995, as he was required to go to his native place. However, Parminder Kaur had insisted for substitute servant. On 29/11/1995, the accused Mohan brought the appellant-accused No.1 Bhim @ Raju to work as substitute servant. P.W. 2, Parminder Kaur, considered and allowed Bhim to work in the house on 29/11/1995. On 30/11/1995 the accused No.3 and accused NO.1 worked together in the house and accused no. 3 Mohan gave necessary instructions to the accused No.1 Bhim @ Raju. On 1/12/1995 onwards,the accused No.3 Mohan stopped working in the house of the complainant. The accused No.1 Bhim alone was working in the house till the date of incident i.e. 15/12/1995.

4. The complainant with his children had left the

house as usual on 15/12/1995 The accused No.1 Bhim being domestic servant was expected to come in the house at about 9.00 a.m. But on that day, the accused did not come, therefore, Parmidner Kaur, P.W. 2 could not leave the house by keeping her monther-in-law alone. The deceased Damyanti therefore, asked her to keep message in the adjoining flat, where Bhim was working and had suggested her to go to the clinic along with Jaswant. P.W.2, Parminder, accordingly enquired from the nearby flat, but was surprised to note that Bhim was not working there. Parminder, therefore, requested her father-in-law- Jaswant to go ahead. Parmidner, received a phone call from her husband complainant, to attend the clinic. At that time, at about 9.15. or 9.20 a.m., the accused No.1 Bhim came along with one unknown person, namely Shriniwas, appellant-accused No.2. The deceased Damyanti objected the presence of the unknown person in the house and therefore, Raju alone had to work in the house. The accused No.2, Shriniwas went out. At about 9.30 a.m. Parminder left the house for clinic. The mother-in-law Damyanti and accused No.1 Bhim were only two persons in the house. Deceased Damyanti, had informed to his son Mayank on phone that Parminder left the house and coming to the clinic.

5. On the same day, as usual, Mayank Parminder and Jaswant returned to the house by the car. Parminder, P.W. 2 and Jaswant got down from the car and Mayank, complainant took the car at the backside of the building and parked it. Parminder with her key unlocked and opened the door. Her father-in-law, Jaswant was also with her at that time. They did not find Damyanti in the hall, therefore, Parminder went into the adjacent kitchen, Damyanti was not in the kitchen also. Parminder, therefore, proceeded towards the Bedroom and saw Damyanti lying on the ground, in a small room, between Kitchen and the bedroom. She was tied by the towel around the mouth and nose and hands with a napkin. Parminder, shouted immediately Jaswant rushed to the small room. Both of them started crying. Mayuank heard the chaos and he also rushed into the house and found dead mother lying on the ground. Parminder untied the towel and the napkin. Dr,. Mayank saw the pulse and examined his mother. Mayank immediately took Jaswant in the adjoining bedroom. Mayank unable to contact police on telephone. Hence Mayank and Parminder, in their car went to the nearby Santacruz Police Station. A.P.I, More was on duty at the police Station. The first

information report was accordingly, recorded by the A.P.I., More and was registered as Cr.No. 775/1995. The police staff took Mayank and Parminder in the police vehicle and went to the house of Mayank. The body was sent for the post mortem, after completing the formalities. They found that the clothes were scattered. The box of ornaments containing five golden bangles, golden Patli (thick bangles), one golden pendant were missing from the wordrobe of Parminder and wrist watch of her monther-in-law was also missing and so also the cash from the house. The detailed panchanama in presence of two panchas was prepared. The statements of the witnesses were also recorded. The cook, P.W.5, told that she had been to the house at about 11 a.m. and rang the bell for sufficient time but she could not get any reply. She thought that Damyanti might have gone to the neighbour’s house. The cook informed to the liftman that nobody was responding from inside the house, so she asked him to inform accordingly.

6. On 29/12/1995, the investigating Officer, P.I. Tupe on information arrested Shriniwas, accused No.2 and during the interrogation, accused-Shriniwas confessed in

the night of 29-30.12.1995, and led the police and panchas to the open ground at the backside of Singania Hospital, Thane. The police had been taken to the house/hut of Bhim @ Raju-accused No.1, Mohan Accused No.3 and Mallamma- accused No.4, wife of accused No.1 Bhim. During that enquiry and search, by the lady police officer in presence of lady the panch, found that the golden bangles and a golden pendant were concealed inside the bottom strip of the blouse on the person of accused No.4, Mallamma. Therefore, the said blouse with ornaments, was seized. The accused-Mohan also confessed that he had sold ring to his friend-Ramlu who was residing in the adjacent hut. The police went inside the adjacent house Ramlu, admitted that he has purchased the golden ring from Mohan, for Rs. 1000/- and produced the ring before the police . The police had accordingly, prepared detailed panchanama and seized all the ornaments and brought accused Nos. 1 to 4 into the police station. The accused No.2 in presence of two panchas and police, has produced the knife. At the instance of Shriniwas-accused No.2, in a hut in Adarsha Nagar, a ladies wrist watch was also found and seized.

7. During the investigation, it was also found that

accused No.1, Bhim, accused No.2, Shriniwas and accused No.3, Mohan, got melted five golden bangles from Mahesh Jwellers at Gandhi Nagar,Thane and had prepared the gold bar.

8. The accused, thereafter, took the police to Alankar Jwellers in Jogeshwari (East) and pointed out shopkeeper Rodilal to whom they had sold the golden bar. The said golden bar was produced on the next day. On 31/12/1995 the accused Ramdas told the police in presence of the panchas that, after robbery they killed one Badana and threw the dead body in the revulte as referred above. The decomposed dead body was found near a creek at Milit Nagar. The Oshiwara Police Station has registered a separate crime for the same.

9. The complainant have identified their ornaments. The accused were charge-sheeted at C.C. No.463/P/1996. They denied the charges. The prosecution has examined 20 witnesses. No evidence was led by the defence.

10. **FINDINGS OF THE TRIAL JUDGE:-** There was no eye witnesses. However based on the circumstantial evidence and material placed on the record, the learned Sessions

Judge held that the accused no.1 and 2 along with deceased Badana and absconding accused Ramdas, committed criminal house tress pass and committed robbery and murder. It is further held that these accused Nos. 1 and 2 alongwith deceased Badana and absconding accused Ramdas, tied towel around the mouth and nose and tied hands with the napkin and thereby strangulated and suffocated Damyanti with intention to commit her murder and that resulted in to her death. The accused No.1 and 2 alongwith others therefore, have common intention to commit murder of Damyanti. It is further held that accused Nos. 1 and 2 along with others have committed robbery with murder by taking away golden ornaments, wrist watch and cash total worth Rs. 1,35,000/- from the house of the complainant. It is also held that the accused Nos. 1 to 4 along with deceased accused Badana and absconding accused Ramdas, entered into criminal conspiracy to commit robbery by causing death of Damyanti.

11. SUBMISSION OF THE PARTIES:- Heard Counsel appearing for the appellants and A.P.P. for the respondent. Counsel for the appellants based on their submissions, prayed for an acquittal. Whereas the

A.P.P. contended to maintain the order of the lower Court. The appellants are innocent and falsely involved in the case. There was no direct evidence against the appellants to show that they were responsible for causing suffocation and death of Damyanti. The entire case is on circumstantial evidence. The benefit of doubt should be extended to the appellants as the case is based on the circumstantial evidence and chain of evidence were not sufficient against the appellants. There was no recovery at the instance of the appellants and recovery of knife was planted one. They further contended that there werelot of contradictions in the evidence of P.W.2 and P.W. 4. The appellants further contended that the motive to kill was not brought on the record. All the witnesses are not natural but they are false and concocted witnesses. The medical evidence did not elaborate or corroborate the circumstantial evidence. In absence of any eye witness the chain of circumstantial evidence were not sufficient to convict the accused.

12. **REASONING TO MAINTAIN CONVICTION AND SENTENCE-CIRCUMSTNATIAL EVIDENCE:-** We have gone through the testimony of respective witnesses as well as reasoning

given by the learned Judge. There is no eye witness in the present case. Therefore, conviction is based on the circumstantial evidence. Those circumstances are;

(i) All the accused 1 to 4 and others had opportunity to enter inside the house.

(ii) Preparation to commit the offence.

(iii) the appellant-accused No.1 Bhim was lastly seen in the company of the deceased.

(iv) the conduct of the accused persons prior and after the incident.

(v) the recovery of stolen articles from the accused persons and at the instance of the accused persons.

The prosecution has proved the case, the death and the injury which caused the death. The same has been duly proved by P.W. Doctor and other related medical as well as, other corroborative evidence. There remained no doubt that in the present case, deceased Damyanti had suffered homicidal death.

13. FULL OPPORTUNITY TO ACCUSED NOS. 1 TO 4 TO ENTER THE HOUSE:- P.W.1 and 2 supported the prosecution case that the accused No.3, prior to the incident was serving in the house for long time. He was fully aware of day today affairs of the family members of the deceased Damyanti. On 29/11/1995 the accused No.3 brought accused No.1 Bhim, into the house. P.W. 2, Parminder's permission he was allowed to work. Being profesionals and because of the fixed routine, there was no time and choice for selection of the servants. There was no option but to leave the house prior to 9 a.m. and to keep the deceased Damyanti, old lady with some servant. All these activities and conduct as deposed by P.W. 2 and P.W. 3, were natural. So the accused Nos. 1 and 2 had free and full opportunity to enter into the house of the complainant. The accused No.2 was brought on the date of the incident i.e. 15/12/1995 at about 9.30 a.m. by accused No.1 Bhim. The said accused Shriniwas, was however, not allowed to enter into the house. Therefore, Shriniwas went out. P.W. 2, Parminder had definitely seen accused 2 Shriniwas, inside her house. Shriniwas must had been waited out side the house, Shriniwas was seen near the house of the

complainant, on the same date. Mr. Tupe, P.W.20, had rightly moved to collect the reliable evidence. Accordingly, before the Special Executive Magistrate identification parade was fixed. P.W. 2 had identified the accused Shriniwas. The evidence of P.W. 7, Special Executive Magistrate has confirmed and corroborated the same. Therefore, even if there are some lacunas as observed by the learned Judge, we see that the evidence of Parminder and identification of accused No.2 Shriniwas cannot be disbelieved.

14. The another witness, Ranjanaben, P.W. 5, who was working as a cook in the house of the complainant for about 4 years also deposed that accused No.1, Bhim and accused No.3, Mohan were working in the house. She had seen them working in the house earlier also. She identified both the accused before the police and in the Court also. This examination-in-chief of the witness remained intact. Therefore, the prosecution according to us rightly proved that accused have opportunity of entering into house of the complainant and accordingly they had entered and committed the crime.

15. (ii) **PREPARATION AND OPPORTUNITY TO COMMIT THE**

OFFENCES:- All the accused therefore, had full opportunity knowing fully the day today affairs of the family and therefore, accordingly had enough time to commit the offences. The accused No.3 was not in the picture and not proved by the prosecution. Even recovery of these ornaments was not sufficient to punish accused No.3. P.W.2, Parminder, had to wait for the accused No.1, before leaving the house. The accused No.1 Bhim, came in the house at about 9.50 a.m. There was no much challenge to this part. The accused No.1 therefore, as observed, came late in the house and gave false excuse. The accused No. 1 came with the accused No.2 Shriniwas. However, the entry of accused No.2 Shriniwas in the house was objected. The accused No. 1 was working in the house since 29/11/1995. They were fully aware of the timing of the complainant and his wife and day today routine of the family. Therefore, the activities and conduct of the accused Nos. 1 and 2 are sufficient circumstances to infer that the accused had prepared themselves to to-do illegal act in the house of the complainant. The accused No.1 had seen the physical condition of the deceased Damyanti and the fact that after 9 a.m. till arrival of the cook at 11 a.m. nobody visits their house. As rightly observed by the

learned Sessions Judge, the accused 1 and 2 could not have thought to bring any weapon as they were fully aware of the feeble condition and age of Damyanti. There was no material on the record to show that the accused No.3 Mohan or accused No.4 Mallama or the absconding accused Ramdas or deceased Badana, were present near the building of the complainant.

16. **LASTLY SEEN TOGETHER:-** Another circumstance which is quite material, that is the presence of Bhim at the scene and/or seen lastly in the company of the deceased. As held, Bhim was lastly seen in the company of the deceased. P.W. 2, Parminder deposed that she asked accused No.2, Shriniwas to leave the house and thereafter, when she left, only the accused No.1 Bhim and deceased Damyanti were in the house. This evidence remained unchallenged. P.W. 5, Ranjanaben, has deposed that she had also been to the house at about 11 a.m. but she did not find any response from inside the house, so she left the message with liftman and went away. This witness also appears to be natural. The evidence of P.W. 5, Ranjanaben was also not challenged much. Therefore, it is clear that during the period from 9.15 a.m. to 11.a.m. the accused No.1 Bhim and Damyanti

were present in the house. There was no case by the defence or even suggestion that Bhim was outside during this period. There was no explanation from the accused No.1 whether he had gone out after 9.15 a.m. The police, after enquiry had tried to trace out the accused Nos.1 and 2, but both were not traceable.

17. THE CODUCT OOF THEACCUSED 1 AND 3:- The accused No.3 had sought permission to remain absent for 10 days. He was not on duty on 15/12/1995. The accused No.1 had no business to continue the duty even after 10 days. However accused No.1 told her that she need not worry as he would continue to attend the work till arrival of Mohan. This evidence also remained unchallenged. The accused No.1 and accused No.3 had no reason to remain absent from the time of the incident. P.W. Mayank and P.W. 2 Parminder also deposed, that accused No.1 and accused No.3 did not turn up to their house, after the incident. There was no such suggestion even put to that effect by these accused 1 and 3. This conduct also reflect the guilty mind and guilt of the accused. P.W.2, Parminder in fact deposed that prior to the incident, she had absolutely no grievance against accused Nos. 1 or 3. Therefore, after the incident,

these accused not contacted any family members of the complainant. This conduct is also relevant and rightly taken into consideration by the learned Sessions Judge.

18. RECOVERY AND DISCOVERY OF THE ORNAMENTS :- The important aspect is the discovery and recovery of the ornaments. The prosecution has at the instance of accused No.2 recovered the golden bangles, a pendant from accused No.4 Mallamma. Accused No.4 Mallamma is the wife of accused No.1 Bhim. Mallamma had received the ornaments from accused No.1. The spot panchanam and the recovery further proved the same. This includes the recovery of the golden ring from one Ramlu, who had purchased the same from Bhim. The wrist watch was also recovered. The prosecution further proved that the accused Nos. 1,2 and 3 had also approached the jeweller and got melted the golden bangles and thereby got prepared the golden bar. The said golden bar was also recovered under panchanma. Those basic ornaments and wrist watch have been identified by the complainant and his wife. The recovery of golden bangles and pendant (Exh.16) from accused Nos. 1 to 4, as deposed also by P.I., Tupe, P.W.20, in presence of the two panchas and the lady police constable, from the person of accused

No.4 Mallamma, wife of accused No.1 Bhim.

19. The prosecution case is further proved by Witnesses P.S.I. Sangeeta Shinde,P.W. 15 and P.I. Tupe,P.W. 20 .Therefore, taking into consideration all the witnesses and material placed on the record, we see there is no reason to disbelieve these witnesses, as well as, prosecution case. It is difficult to get eye witnesses in such matters. However, considering the above circumstances, we are also of the view that the accused Nos. 1 and 2 have played dominant and main role of committing the offence in question. The circumstantial evidence read with medical evidence corroborate the same. We cannot over look the fact that the accused 1,3, 4 were detected at the instance of accused No.2 and later on all these ornaments and articles belongs to the family has been recovered and identified from their posession. The recovery of these ornaments and wrist watch are duly proved by Exh.29 by P.W. Mr. Tupe, P.W.11 Ramakant Gharat Exh.28. The evidence of P.W. 10 and P.W. 11 of the jwellers have also substantiated the prosecution case that accused 1 and 2 took the golden bangles to jwellers and asked them to melt and accordingly golden bar was prepared. Even

if there are some lacunas or contradictions but that itself nowhere disturb the basic case of these witnesses, specially when these witnesses P.W. 10 and P.W. 8 have identified, the accused 1 to 3. Even though the identification of the golden bar may not be sufficient to convict the accused as the same was not fully proved, still according to us, other circumstantial evidnce are sufficient to link the appellants with the crime in question and no one else. There is nothing pointed out to disbelieve the panch witnesses and other witnesses. This includes the scene of offence Exh.18, by P.W. 4 and P.W.1 Dr. Mayank, Complainant and P.W. 2, Parminder. The presumption under section 114 of Evidence Act and the proximity, including presence of the accused No.2 in the same house and later on in the same area, just before the time of the incident also support the prosecution case. the murder must have been committd by the accused.

20. The impurgned Judgment and order is correct and based on the evidence and therefore need no interference. The cumulative effect of the above circumstantial evidence connect the accused to the crime beyond reasonable doubt. There is no case of giving any

benefit of doubt to the appellants.

21. Conclusion:- The appellants have committed offence of robbery under section 394, and offence under section 450 of Indian Penal Code and have also committed the offence punishable under Section 302 r/w section 34 of Indian Penal Code. There is no case made out for any leniency or any reduction of the sentences as imposed. There is no merit in the appeals.

22. For the reasons referred above, the appeals are therefore, dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]